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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LIVE FACE ON WEB, LLC,)
a Pennsylvania Company,)
Plaintiff,)
vs.) Docket No. SA-15-CV-539-OLG
DANIEL MORENO, Individually) San Antonio, Texas
and d/b/a FULL SERVICE) January 10, 2017
VENDING CO.,) 3:02 p.m. to 4:13 p.m.
Defendant,)
vs.)
VENDCENTRAL, a California)
Company,)
Third Party Defendant.)

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE HENRY J. BEMPORAD
UNITED STATES MAGISTRATE JUDGE

TRANSCRIPT ORDERED BY: Shawn Michael Grady, Esquire

A P P E A R A N C E S:

FOR THE PLAINTIFF:
STANDLY & HAMILTON, LLP
By: Jodie Slater Hastings, Esquire
325 North St. Pearl Street, Suite 3300
Dallas, TX 75201

LOPEZ SCOTT, LLC
By: Orlando R. Lopez, Esquire
3707 N. St. Mary's Street, Suite 200
San Antonio, TX 78212

FOR THE DEFENDANT:
SHEEHY WARE & PAPPAS, PC
By: Shawn Michael Grady, Esquire
909 Fannin Street, Suite 2500
Houston, TX 77010

1 COURT RECORDER: FTR Gold

2 TRANSCRIBER:

3 CHRIS POAGE

4 United States Court Reporter

5 655 East Cesar E. Chavez Blvd., Rm. 314

6 San Antonio, TX 78206

7 Telephone: (210) 244-5036

8 chris_poage@txwd.uscourts.gov

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1 (Open court)

2 **COURT SECURITY OFFICER:** All rise.

3 **THE COURT:** Good afternoon. Please be seated.

4 Calling the case of SA-15-CA-539, Live Face on Web,
5 LLC, versus Daniel Moreno, et al. If I could have announcement
6 of counsel, please.

7 **MR. GRADY:** Your Honor, Shawn Grady representing
8 defendant Daniel Moreno.

9 **THE COURT:** Okay.

10 **MS. HASTINGS:** Good afternoon, Your Honor. My name
11 is Jodie Hastings. I'm here on behalf of the plaintiff, Live
12 Face on Web.

13 **THE COURT:** All right.

14 **MR. LOPEZ:** Orlando Lopez, Your Honor, on behalf of
15 the plaintiff as well.

16 **THE COURT:** All right. I gather then we don't have
17 anyone here on behalf of the third-party defendant, though
18 they're not really at issue in this particular -- the motions
19 that are set today.

20 All right. Very well. You may be seated.

21 We have two motions set for a hearing today. That's
22 the first motion for -- to compel responses to request for
23 production that was filed sometime ago -- that's docket entry
24 54, I believe -- and then more recently, docket entry 60, the
25 second motion to compel.

1 There's also out there the question of -- those were
2 filed by the defendant. There's also out there the question of
3 the plaintiff's motion for summary judgment. The reason why
4 that has some relevance here is because the response of the
5 defendant has been to request to defer responding to that
6 motion further until there's additional discovery. So to the
7 extent that discovery is at issue there, too, I'd like to hear
8 about that, if I can.

9 So let me hear from the defense as to these two
10 motions.

11 **MR. GRADY:** Thank you, Your Honor.

12 **THE COURT:** You may -- if you could approach the
13 podium.

14 **MR. GRADY:** Oh, yes.

15 **THE COURT:** We do recording here. There's no court
16 reporter.

17 **MR. GRADY:** Okay.

18 **THE COURT:** And this makes a better recording there.
19 The little microphones on the table are not great.

20 **MR. GRADY:** No problem.

21 A little background, if you may, Your Honor.
22 Initially -- okay. So my client is Daniel Moreno, a small
23 businessman, in April 2012 he decided to create a website. He
24 hired a company to do it, Vend Central, the third-party
25 defendant.

1 And he bought a video web spokesperson from another
2 company named TweakWell, who is now -- who has been liquidated
3 in bankruptcy. And then about 40 -- and he put it on his
4 website. He had Vend Central do it. He has no technical
5 background. He's in the vending machine business. And then
6 low and behold about four years later he gets sued by Live
7 Face. No cease and desist, no -- you know, no warning, just
8 we've -- you know, he's just been sued.

9 He is one of hundreds of individuals and businesses
10 in states across the country who have been sued by Live Face,
11 which, you know, a PACER search will reveal, and we have
12 submitted that to the Court. It's on the record. And it's
13 basically for the same product, which is an issue that
14 defendants contend with, because they say they have multiple
15 versions, they do different things. So that's going to be an
16 issue.

17 Initially, I was not on the case. I appeared later.
18 And my initial analysis and my recommendation was that, okay,
19 this product does not appear to be worth a lot. They made
20 damage demands that were very high. And I thought, well, this
21 product -- I did do some research on the web, looked at both
22 products and found that the product could be had for very low
23 amounts. I understood the damage -- under the copyright act,
24 the actual damages to be fair market value.

25 So initially my approach was just to mine the damage

1 aspect of the case. And I'd seen the litigation history, so I
2 thought, okay, maybe there's something to this. Maybe, you
3 know, TweakWell copied it. And they -- clearly, they think so.
4 They sued a hundred times on it, you know.

5 And I have no software expertise, so I didn't -- you
6 know, I contacted some experts, and they were very costly. I
7 mean, in the IP world experts are -- they're -- it's just
8 outrageous. So I was like, okay, this seems like a good
9 strategy. Maybe we can come to -- you know, just get the
10 damages down, get a reasonable settlement, you know, that's
11 good for my client.

12 So we issued the first RFP. So that's why the RFP
13 and the damages are kind of -- the first RFP are primarily
14 damage related, you know. And then we sought mediation. And I
15 gave extensions to plaintiff's counsel. We set up a date, and
16 I made it clear to everybody, I was like, we need to get
17 responses so we can evaluate the damages so we can, you know,
18 mediate after mediation.

19 And we didn't get a response. And at that point I
20 realized, okay, we're going to have to look at the merits of
21 the claim. And then they filed the MSJ. So, of course, we
22 were forced then to look at that. So then I consulted with
23 experts. Copyright attorney Joel Rothman, he's been -- he's
24 appeared, and he is -- he has been -- he's going to take all
25 the depositions of experts in the case, highly qualified. And

1 he had -- he connected me with some experts, too, a software
2 coding expert and a damages expert who's also a software coder
3 who's been in the business for a long time. And both of those
4 reports are on the record. They're attached to defendant's
5 reply to plaintiff's response to the second motion to compel.

6 And so once I consulted with Rothman and his experts,
7 then I realized that Mr. Moreno has a very strong defense. I
8 did -- and part of the plaintiff's tactic, I believe, and I
9 suspect, is that they hide behind some of the esoteric nature
10 of software code and the difficulty and the high expense of IP
11 litigation. But anyways, that's -- you know, that's a tangent.

12 So we requested our second RFP. That was in
13 November. The first RFP was in August. Plaintiff did not
14 respond to the second RFP. I mean, they did respond, but they
15 didn't produce any documents. Then we started scheduling
16 depositions. Those are -- those are imminent, the first of
17 which being plaintiff's expert, Dr. Goldberg, in about a week,
18 and then the corporate rep on the 25th, and then our experts
19 are -- we're negotiating, trying to work out dates. But we're
20 going to present them.

21 And the discovery deadline, of course, is in
22 February. So we have to take these depositions, and we haven't
23 received full responses to our discovery requests, and we've
24 conferred, and there's been no good reason that we can see.
25 And, you know, so that's why we filed the motions.

1 **THE COURT:** Let me just -- let me just ask you. We
2 can go through the various requests, the first set and the
3 second set in either order. But to what extent are those
4 documents that are requested in the first or second request
5 necessary to conduct the deposition of the expert or the
6 deposition of the corporate representative?

7 **MR. GRADY:** Well --

8 **THE COURT:** Because, I mean, just looking at it, I
9 didn't see -- I wasn't exactly -- I mean, some of this -- how
10 do you -- documents that would support your claim --

11 **MR. GRADY:** Well --

12 **THE COURT:** -- type of things. And maybe you need
13 those things and so forth. Go ahead.

14 **MR. GRADY:** -- for the corporate rep, I mean, we
15 would like to know records of the company, accounting records
16 on customers who actually paid the monthly licensing fee. The
17 plaintiff produced contracts which reflect -- and I should -- I
18 should also bring up, on January 4th, which it's not on the
19 record, plaintiff designated rebuttal expert, Dr. -- not
20 doctor -- Walter Bratic.

21 **THE COURT:** Oh, okay.

22 **MR. GRADY:** And he produced a report. They served us
23 with a report. It has not been filed. And there are two
24 paragraphs in this report and opinions of Dr. Bratic which I
25 think show the relevance of -- the necessity for discovery for

1 the corporate rep at least.

2 He says in his opinion in paragraph 7 -- I have a
3 copy here -- that Mr. Norris, who is Wayne Norris, who is
4 defendant's damages expert, that his opinion is totally
5 unreliable because he lacks relevant data points in determining
6 the market value of the LFOW code. Those data points consist
7 of critical information which includes the amount that
8 customers actually paid for the rights to the LFOW code, not
9 just the amount that they have agreed to.

10 And these are specific requests in my first RFP that
11 we have not received a response to. We did receive the
12 contacts.

13 **THE COURT:** I guess the reason I'm asking this is
14 when you talk about deposing the expert or the documents,
15 again, those -- that sort of question, what was paid by other
16 customers, is a damages issue as far as I can tell. There's
17 different ways to show damages in a copyright infringement
18 case, and, of course, there's also statutory damages as an
19 alternative.

20 But I'm still wondering -- you know, like I said, you
21 know, this kind of bleeds over into the issue of the motion for
22 summary judgment. And I'm wondering what documents do we need
23 to go forward on that motion, to get that resolved? And so I'm
24 trying to figure -- that's what I'm trying to figure out.

25 **MR. GRADY:** Okay. And here's another one. And it's

1 an issue that's confusing to me as to the differences between
2 the different video spokesperson products, the 7.0 or 6.0. And
3 I don't know what the difference is.

4 Apparently, according to responses from the
5 plaintiff, the version that is sold on the website is not even,
6 you know, licensed software. But recently -- although -- I say
7 I don't know. I didn't know until Bratic -- I still don't
8 really know, but I know now at least somewhat from the
9 plaintiff that -- from Mr. Bratic, that he -- in an interview
10 with the CEO, Mr. Shcherbakov, that the differences are solely
11 based on certain terms that they offer their customers, nothing
12 to do with code, which is new. They haven't pled that. They
13 haven't -- we don't have any documents which describe to
14 defendant what are the differences between the products.

15 And that is a pending -- you know, and we have many
16 discovery requests on the first and second RFP which seek to
17 discover the nature of the product and what -- and, very
18 importantly, what is the difference between the product that
19 costs \$300 and 3,000 versus the one that's monthly licensed for
20 6,900?

21 And Bratic describes it here in paragraph 42. It's
22 important. This is the only document that we have of that. I
23 would suspect that there are other documents that the company
24 has that would describe and put defendant on notice as to what
25 the difference of those products are so that when we have the

1 deposition on the 25th, we can be informed and ask, you know,
2 the corporate rep about differences in those products and how
3 they price them. As of now, I have nothing but Bratic's
4 report, which is based solely on an interview -- it's even
5 footnoted, "Interview of Eduard Shcherbakov," period. That's
6 it.

7 **THE COURT:** Well, I guess I'm still wondering how
8 would that -- depending on which product it is, how does that
9 affect the question of liability in the motion for summary
10 judgment? Are you saying that it's an earlier version or a
11 later version; that this somehow affects either the validity of
12 the copyright owned by Live Face on Web or the nature of the
13 infringement by your client, or what are we talking about?

14 I still -- all that still sounds to me like a
15 question of how much it costs. How much it costs is a damages
16 issue. I'm trying to get at -- and the reason I'm asking is I
17 will need to know when you're going to respond fully to this
18 motion for summary judgment. I need to know if there's going
19 to be additional motions for summary judgment as to damages.
20 I'm trying to get a handle on this litigation. I'm a little
21 concerned we don't have the third party here since it sounds
22 like you didn't -- Mr. Moreno doesn't know anything about how
23 he got this information.

24 But I'm trying to figure out, to the extent we're
25 litigating the issue of liability, how are we litigating that

1 and to what extent is this discovery necessary for that?

2 **MR. GRADY:** Absolutely. And I haven't talked about
3 that, and I will talk about it.

4 **THE COURT:** Okay.

5 **MR. GRADY:** Okay. And so Nancy Moreno [sic] is a
6 software coder. She produced a report which in detail will
7 describe -- I'll summarize it.

8 **THE COURT:** Nancy Miracle. I think it's
9 Nancy Miracle.

10 **MR. GRADY:** Nancy Miracle. I'm sorry. I apologize.

11 **THE COURT:** Go ahead.

12 **MR. GRADY:** She produced a report. We attached it.
13 It's in the reply to the response to the second motion to
14 compel. And I'll summarize it here.

15 **THE COURT:** There's -- let me just stop you there.
16 There's a reply to the response to the second motion to compel?
17 The only thing I received was a response yesterday. I filed --

18 **MR. GRADY:** Oh, I'm sorry, Your Honor. It might be
19 on -- I'm sorry. It might be to the first -- let me see --

20 **THE COURT:** I have the first motion to compel, a
21 response and a reply. There was some litigation over when to
22 respond to the second motion to compel, which I resolved by
23 saying, do it by yesterday, put the second motion to compel on
24 this hearing as well. So since we're here, let's get it
25 resolved. I haven't seen any reply to that response. If so,

1 it would have been filed today. And I'll --

2 **MR. GRADY:** Yeah.

3 **THE COURT:** -- to be frank, I had hearings all day
4 today. So I haven't seen any reply to the response.

5 **MR. GRADY:** No. That's correct. I did not. I --

6 **THE COURT:** Okay. Very well.

7 **MR. GRADY:** Yeah. I filed the expert report of Nancy
8 Miracle and Wayne Norris. And it's attached to the second
9 motion to compel.

10 **THE COURT:** Oh, to the motion itself? All right.
11 Very well.

12 **MR. GRADY:** Yeah. I'm sorry. I'm getting -- there's
13 so many -- yeah, there's two motions to compel. It's getting
14 confusing.

15 **THE COURT:** I understand. All right. Go ahead.

16 **MR. GRADY:** It's Nancy Miracle's -- and I have a copy
17 here, too.

18 **THE COURT:** I have that whole motion and all the
19 attachments. So go ahead. All right.

20 **MR. GRADY:** Okay. So just to summarize her opinions
21 real simply, which is basically the only way I know how, the
22 first defense is that LFOW's video spokesperson version 7.0 is
23 not copyrighted. She did an analysis of the code. Let me get
24 my notes here.

25 And the first part of her analysis looks at the

1 sources. It doesn't compare it to Moreno's, but it looks at
2 the sources of the code itself. And she provides detail of her
3 claims, too. So she breaks it down. And basically 94 percent
4 of the code is not original. 38 percent of the code was
5 previously published by other coders. It actually includes
6 other copyrighted code, which Live Face failed to -- or
7 omitted -- I don't know if intentionally or unintentionally --
8 to the copyright office, as far as we know, at least -- and
9 that's an affirmative defense we have in this case.

10 18 percent of the code is written to comply with the
11 design of Shockwave Flash, which is the actual video player
12 which is not an optional type of coding. And then 30 percent
13 of the code is dictated by efficiency and the fundamental
14 operation of the code.

15 Now, in this analysis it also includes the legal
16 standard, the Abstraction-Filtration Test which gives, you
17 know, recognition of her analysis as a valid way to determine
18 whether -- you know, software code is written --

19 **THE COURT:** All right. Let me just stop you there.
20 If she's been able to do -- make this assessment based on the
21 data that she's received, why do you need more discovery on
22 that data if you already have an expert who's been able to
23 make -- obviously they're going to disagree, but --

24 **MR. GRADY:** Right.

25 **THE COURT:** -- you've got your expert. Does your

1 expert say, "Hey, I'm missing some stuff?"

2 **MR. GRADY:** Well --

3 **THE COURT:** That's -- I mean, you see why I'm asking.
4 I'm trying to get you --

5 **MR. GRADY:** Right. Yeah. No. I know.

6 **THE COURT:** -- the information you need so you can
7 move forward. They'll probably ask the same thing of this --
8 when they depose this --

9 **MR. GRADY:** Yeah.

10 **THE COURT:** -- this expert. They're going to ask
11 some of those questions, too. So that's my question.

12 **MR. GRADY:** Okay.

13 **THE COURT:** Is there -- in this -- it's a very
14 lengthy report. I think it's somewhere around 70, maybe
15 more -- 70 pages.

16 **MR. GRADY:** Yeah.

17 **THE COURT:** -- additional of that. Is there -- is
18 there somewhere in this massive report or request, "Look,
19 there's some documents that are being hidden from me so I can't
20 see" --

21 **MR. GRADY:** Well, I guess --

22 **THE COURT:** -- or, "I need" -- if not hidden, "I
23 haven't been able to obtain them yet," or anything like that.

24 **MR. GRADY:** Well, yeah. They would be -- there's
25 requests for, I mean, you know, stuff -- communication with the

1 copyright office. As far as what are the -- you know, 38
2 percent of the code was pre-published by other coders, I mean,
3 we're going to have the corporate rep there, you know. I'd
4 like to know, do we have all the communications with the
5 copyright office, you know, anything that went into your
6 copyright, basically.

7 **THE COURT:** Okay.

8 **MR. GRADY:** What all went into it? Did you know --
9 did you -- you know, the only way that we get any evidence on
10 knowledge would be through the corporate rep. And if we had
11 documents, that would greatly, you know, assist in our line of
12 questioning on that topic.

13 **THE COURT:** And I think that's within -- my memory is
14 that's within the scope of the motion to -- the request for
15 production. There was some request regarding the information
16 provided to the copyright office in support of their --

17 **MR. GRADY:** There was. There was.

18 **THE COURT:** All right.

19 **MR. GRADY:** But we have no way of knowing whether
20 that's all there is because --

21 **THE COURT:** They said they've produced some stuff,
22 but you --

23 **MR. GRADY:** They have produced some stuff.

24 **THE COURT:** -- don't know if it's -- all right.

25 Well, we'll find out.

1 Other question I had for you is this issue of which
2 version. Is it clear in your mind from the complaint which
3 version is claimed to be infringed here? Is it 6.0? Is it
4 7.0? Is it an earlier one?

5 **MR. GRADY:** It's definitely --

6 **THE COURT:** Is that why -- is that why -- is that an
7 issue here? I didn't think that was.

8 **MR. GRADY:** Well, it's definitely 7 -- they allege
9 7.0 is infringing -- I think that it's undisputed that -- you
10 know, that they allege that 7.0 --

11 **THE COURT:** All right. So why would you need any
12 information regarding any other product? If that's the only
13 thing they're alleging being infringed, they're not going to
14 come in -- and they're going to say, "Oh, look, here's 6.0, and
15 they infringed that, too." That would be irrelevant.

16 **MR. GRADY:** Well, I mean, some of our requests just
17 seek, you know, because -- I guess it goes to damages.

18 **THE COURT:** Oh, all right. Go ahead.

19 **MR. GRADY:** Yeah. That's the predominant --

20 **THE COURT:** The idea being that what they charged for
21 the other one would have some relevance to what they're
22 charging for this one?

23 **MR. GRADY:** Yeah. I just have no idea how they get
24 to the 6,900. Does it include, you know, services? Is
25 there -- what are you telling the customers, too, most

1 importantly, because it's fair market value. So if you have a
2 willing buyer, you know, what are they agreeing to? I don't --
3 I don't understand. I just don't understand what they're
4 disclosing to them, you know, separate from these -- a couple
5 of contracts they produced.

6 But, yeah, on the coding, I guess -- on the actual
7 infringement, I'm trying to think what other requests. And our
8 second RFP predominantly seeks, you know -- seeks documents on
9 liability and --

10 **THE COURT:** But, yeah, that's what I'm trying to
11 get --

12 **MR. GRADY:** Yeah. Right.

13 **THE COURT:** What I'm trying to get at, sir, is I need
14 to know what you're going to need to -- I'm trying to pin you
15 down. I need to know what you need to have so that you can,
16 armed with Ms. Miracle's expert report, respond to the motion
17 for summary judgment, move forward on the liability issues
18 and -- you know, separate and apart from the damages issues we
19 also have to address. I'm just trying to go through them in
20 some logical way.

21 **MR. GRADY:** Okay. I understand.

22 **THE COURT:** So what -- is there something -- the
23 communication to the copyright office, I'll hear from the other
24 side on that. Is there other stuff that you're looking for
25 perhaps with regard to other litigations that are -- have

1 any -- happening around the country? I know that they're --

2 **MR. GRADY:** Oh, yes.

3 **THE COURT:** -- you've made the allegation that
4 there's 123 cases. There are -- appear to be a large number of
5 cases with Live Face as a plaintiff. I know that there was
6 multidistrict litigation that was attempted last year, in
7 December of 2015, involving 32 cases, 12 of which settled, 20
8 which were still pending at the time that multidistrict
9 litigation centralization was requested and denied. And so
10 there's those cases. Perhaps those cases are more directly
11 relevant involving, for example, 7.0 or similar charges to --
12 the charges against Mr. Moreno since he's listed as one of
13 those cases.

14 Is that what -- I'm just trying to get at what you
15 need so I can ask the other side, what have they produced.

16 **MR. GRADY:** Yes, you are right. The deposition
17 transcripts in these other similar actions --

18 **THE COURT:** Do you know -- to your knowledge are
19 there deposition transcripts in these other civil actions?

20 **MR. GRADY:** Well, they didn't fully respond to the
21 request, so I don't know. Honestly, I don't. I mean, I think
22 that there is at least -- I have found information [inaudible]
23 one other one, I've heard. I don't have reliable information
24 on that, but I do -- people just talking, other lawyers, I've
25 heard that there is another one. So one other one at least.

1 **THE COURT:** All right. Let me ask you, with regard
2 to Mr. Goldberg, their expert, have you had other defense
3 counsel reach out to you and say, hey, we'd like to attend that
4 deposition or be involved in that deposition because the
5 multidistrict litigation panel indicated one of the reasons
6 they weren't consolidating this case is because there was the
7 possibility, and I'll quote, of alternatives to centralization
8 such as shared experts and common depositions. So --

9 **MR. GRADY:** Right.

10 **THE COURT:** -- I mean, I'm trying -- I'm interested
11 to see how many times we're going to be going down this road.
12 Have you had any contact with any of these other --

13 **MR. GRADY:** Well, Mr. Rothman actually spearheaded
14 the MDL, and he came to us.

15 **THE COURT:** All right.

16 **MR. GRADY:** So the answer --

17 **THE COURT:** So to the extent -- so he at least is
18 aware of some of these other defendants and may be in contact
19 with their particular lawyers?

20 **MR. GRADY:** Absolutely. In fact, Ms. Miracle was an
21 expert in Mr. Rothman's case --

22 **THE COURT:** Oh, all right.

23 **MR. GRADY:** -- when he defended a case against Live
24 Face. And according to Mr. Rothman, there's been -- you know,
25 this is kind of new, that we're -- that I'm involved in and

1 developing this defense. Because other plaintiffs, they just
2 settle so quickly. It's just because of the cost and expense
3 of the experts. So this issue of the defense and the copyright
4 ability of Live Face's video spokesperson, whether version 1 or
5 7, which to me, as I understand it, is not a big -- it's not --
6 the code is the same, right. So it has not been put to the
7 test. It has not been put, you know, where somebody is -- has
8 gotten experts and, you know, taken it all the way. But that's
9 what we're doing.

10 And, you know -- and so -- but, you know, I don't
11 know specifically any more documents other than, I think the
12 settlement agreements -- well, they're not --

13 **THE COURT:** Yeah. I don't see how they would be --

14 **MR. GRADY:** Yeah, they're not.

15 **THE COURT:** Typically, they're not admissible on that
16 basis under the rules of evidence.

17 **MR. GRADY:** Yeah.

18 **THE COURT:** They may be helpful maybe if you wanted
19 to settle the case. You could see what other people were
20 settling for. But I don't see how it'd be relevant to the
21 motion for summary judgment that's been filed by plaintiff.

22 **MR. GRADY:** Yeah.

23 **THE COURT:** But if you're thinking that the
24 communications with the copyright office -- you need to know if
25 anything's been withheld with regard to that, and then the

1 issue as to other depositions or discovery produced on
2 extremely similar cases --

3 **MR. GRADY:** Right. Yes. And the depositions of the
4 damages is very important to the issue, and it will come up in
5 pretty much all of them. And it would be -- you know, it would
6 be very helpful if we had documents to, you know -- to review
7 beforehand to, you know, end up with depositions on damages,
8 especially with regard to the experts.

9 **THE COURT:** Well, with regard to those damage issues,
10 one of the things you were asking for is some sort of business
11 records from Live Face to show the money they've received by
12 way of licensing agreements or otherwise, as opposed to just
13 the agreement, the actual moneys they've received from various
14 other people who have used the 7.0 product or other products.

15 **MR. GRADY:** Correct.

16 **THE COURT:** All right. And you haven't received
17 those?

18 **MR. GRADY:** We have not.

19 **THE COURT:** All right. All right. Let me hear from
20 Live Face a little bit, and then we'll come back to the
21 defense.

22 **MS. HASTINGS:** Thank you, Your Honor. Give me one --

23 **THE COURT:** I'm sorry?

24 **MS. HASTINGS:** Give me one second to just grab a few
25 things.

1 **THE COURT:** All right.

2 **MS. HASTINGS:** Let's just start where we left -- good
3 afternoon. Let's start with that. Good afternoon. Let's just
4 start right where you left off, because I think, actually,
5 since we are here on motions to compel, I have a lot I can say
6 to respond to a lot of different statements that were made by
7 defense counsel, many of which I disagree with, many of which
8 are facts that I disagree with. And I think that's something
9 Your Honor's already [inaudible].

10 But we might just need to get granular, because this
11 is actually a motion to compel documents. And I have actually
12 had a hard time understanding what documents it is the defense
13 counsel wants from us, other than to have us withdraw all of
14 our objections and just produce every document of our company.

15 **THE COURT:** Well, I appreciate your responses with
16 regard to that because it kind of indicates where the dispute
17 point is as to the terms of your objection, in terms of what
18 they've requested. And I don't mind going through those with
19 you.

20 But I'm wondering about the three things I've
21 identified. One was the communication to the copyright office.
22 And apparently you've provided some information. You can maybe
23 describe that for me.

24 **MS. HASTINGS:** Certainly.

25 **THE COURT:** Second was the issue of these other

1 litigation -- and, I mean, I know there's a lot of -- the fact
2 that you've been listed as a plaintiff in a number of cases, I
3 don't think that shows that those cases are relevant. However,
4 I kind of was running from the basis of the multidistrict
5 litigation opinion since at least Mr. Rothman -- and I don't
6 know. You may have opposed centralization on the basis of
7 the not being similar. That wasn't the basis the Court ruled
8 upon, which is -- they've said it looks easy enough to do this
9 without multidistrict litigation. So maybe I'm wrong about
10 that. And then, finally, this issue of 7.0 versus earlier
11 versions.

12 If you could address those three, maybe I'd kind of
13 know where I'm at. And then we can -- I'm happy to talk about
14 the specific responses you made both to the motion to compel
15 and/or to the request for production.

16 **MS. HASTINGS:** I also can speak to the fact that he
17 stated we haven't produced any financial documents, which --

18 **THE COURT:** Oh, okay. We can talk about them.
19 That's the damages issue, too. So thank you.

20 **MS. HASTINGS:** Okay. The copyright office.

21 **THE COURT:** Yes.

22 **MS. HASTINGS:** I went yesterday. And if this would
23 help the Court, I can give you a copy. I went yesterday and
24 just went ahead and indexed our entire production, just so I
25 have a real feel of everything we've given them, because we

1 have given them 1,577 documents, of which several are
2 electronic files.

3 And I did scratch my head about the copyright office
4 communications, because we have provided in LF0354 through 368,
5 the copyright office public catalog, LF0369 through 371, those
6 are all detailed. Our letter to the Library of Congress for
7 our application for 1.0.0, dated December 13, 2007. I have
8 this type of information itemized if that would help the Court.
9 We have given them all of our copyrights. We've given them all
10 the code. It's all -- would you like to see a copy of this,
11 Your Honor?

12 **THE COURT:** No. I don't need to see it.

13 **MS. HASTINGS:** Okay.

14 **THE COURT:** Here's my -- I mean, I'm happy for you to
15 share that with them if you haven't before. But here's my
16 concern about that. As I read the responses, you said, "Look,
17 we will produce." There's a lot -- "subject to our
18 objections." It's hard for me to identify there whether
19 anything's been withheld or not. And under the rules of --

20 **MS. HASTINGS:** Nothing has been --

21 **THE COURT:** So that's my question. With regard to
22 the stuff that you have in your copyright files, because you've
23 had to go and get the copyright, has anything been withheld?

24 **MS. HASTINGS:** No, Your Honor.

25 **THE COURT:** That seems to solve that issue.

1 **MS. HASTINGS:** Yes, Your Honor.

2 **THE COURT:** And I take your representation -- on its
3 word. That kind of --

4 **MS. HASTINGS:** Yes.

5 **THE COURT:** So they know what you have. And if
6 Ms. Miracle responds -- or Mrs. Miracle or Dr. Miracle, I don't
7 know, I'm sorry about that -- looks at it and says, "That's not
8 enough," or, "This shows I'm right," or, "I'm wrong," that's
9 what it is. It is what it is.

10 **MS. HASTINGS:** Exactly, Your Honor.

11 **THE COURT:** All right. Very well.

12 So does this -- when you say this copyright file,
13 does this go to 7.0 -- the 7.0 version, or is this that that is
14 just another version of stuff that was originally copyrighted
15 at an earlier time? Do you believe the earlier copyrighted
16 information is relevant or irrelevant to this case, the
17 copyright -- the seeking to copyright, putting aside the actual
18 claim, if you can.

19 **MS. HASTINGS:** Yes. No. Absolutely.

20 **THE COURT:** Okay.

21 **MS. HASTINGS:** Version 7.0.0 is stand-alone
22 copyrighted.

23 **THE COURT:** All right.

24 **MS. HASTINGS:** It is unlike any of the other
25 copyrights that have been granted to my client and all of which

1 have been -- other versions have been provided to the other
2 side.

3 **THE COURT:** All right. So it didn't do one of these
4 things where we incorporate our other copyright?

5 **MS. HASTINGS:** No. And I --

6 **THE COURT:** I've seen that in copyright requests,
7 where they incorporate other copyrights and things like that.

8 **MS. HASTINGS:** I couldn't quite tell if that's what
9 was being argued --

10 **THE COURT:** Yeah.

11 **MS. HASTINGS:** -- by defense counsel. So what I
12 actually did yesterday was I did a diff comparison just of two
13 different versions of what 7.0.0 looks like. And I've got
14 copies of this. Here you go, Mr. Grady. This is a comparison
15 of 7.0.0 to 5.0.1. This is an example. And this is the
16 comparison to 6.0.1, just kind of an exemplar.

17 What's in white is what is identical. They are
18 not -- to answer your question directly, version 7 -- 6.0.1 is
19 not just 7.0.0 plus two lines. It is a totally stand-alone
20 copyright. It is completely different from any of the other
21 versions that have been granted a copyright by the copyright
22 office.

23 **THE COURT:** All right.

24 **MS. HASTINGS:** So to get to what I think is the
25 ultimate issue, therefore, we do not think that they are

1 entitled to discovery of every contract, every paystub, every
2 invoice, every canceled check, I think -- you know, a lot of
3 different information about every single other one of our
4 products that are driven by all of these other codes.

5 **THE COURT:** All right. To the extent that the people
6 have bought 7.0 from you and licensing agreements and
7 otherwise, have you provided that information to them?

8 **MS. HASTINGS:** Yes, Your Honor. That has been
9 provided to the other side in -- which he's referenced --
10 LFO -- and if you'll -- I would like to read this into the
11 record.

12 **THE COURT:** That's fine.

13 **MS. HASTINGS:** LFO-1 through 15 is the executed
14 license agreement with Veritech Holdings, Inc., dated January
15 14th --

16 **THE COURT:** I'm sorry. With what?

17 **MS. HASTINGS:** Veritech Holdings, Inc.

18 **THE COURT:** Okay. Go ahead.

19 **MS. HASTINGS:** Veritech's actually still hang
20 [inaudible] licensed beyond 7.0.0. There's also the
21 executed -- LFO-63 through 77 is the executed license agreement
22 between LFO and Kelley Blue Book Company, dated September 8th,
23 2008.

24 **THE COURT:** Okay. Heard of them. Go ahead.

25 **MS. HASTINGS:** LFO-78 through 94 is the executed

1 agreement between LFO and Lexus, with Toyota Motor Sales, USA,
2 Inc., effective November 8th, 2007.

3 Dr. Bratic, our expert, has actually evaluated
4 [inaudible] three license agreements for version 7.0.0 in his
5 rebuttal expert report, which has not been filed with the Court
6 because it's attorneys' eyes only.

7 **THE COURT:** That's fine.

8 **MS. HASTINGS:** And I have a copy if you'd like to see
9 one, Your Honor.

10 **THE COURT:** No. That's okay. I might need to at
11 some point with regard to summary judgment.

12 **MS. HASTINGS:** Right.

13 **THE COURT:** But right now I'm just trying to get a
14 picture of the discovery. Go ahead.

15 **MS. HASTINGS:** Absolutely understood.

16 And we have given them the license agreements for
17 7.0.0.

18 **THE COURT:** Okay. So here's then -- the pushback, as
19 I understood it, from the plaintiff is, yeah, these might be
20 the agreements. Can you show that you actually ever received
21 any money from these people?

22 **MS. HASTINGS:** Yes.

23 **THE COURT:** So you have Veritech, Kelley Blue Book,
24 Lexus. Show us those accounts receivable, those invoices, that
25 information, checks or whatever to show that those payments

1 have been received. Have you provided those documents as
2 opposed to just the licensing agreements?

3 **MS. HASTINGS:** I've provided summary financial
4 information that lists monthly versus -- it has a line item for
5 monthly revenue for the licenses and revenue for single pay
6 products. I'd be happy to show that to the Court.

7 **THE COURT:** Okay. Now I got to stop. I got -- lost
8 you there.

9 **MS. HASTINGS:** Sure.

10 **THE COURT:** When you say single pay products versus
11 licensing products, is 7.0.0 one or the other, or is it both?

12 **MS. HASTINGS:** Yes. 7.0.0 is licensed monthly.

13 **THE COURT:** Okay.

14 **MS. HASTINGS:** What Mr. Grady referenced earlier, a
15 price that he found on the internet, also referencing his
16 motion, 259.99, that is a different Live Face on Web product
17 driven by a different code.

18 **THE COURT:** So for the 7 --

19 **MS. HASTINGS:** We receive revenue from both.

20 **THE COURT:** I got you. But can you -- as opposed to
21 the summary info, can you provide them with actual -- a file
22 that says, here's -- because you have to keep them separate,
23 here's our 7.0.0 file for Veritech or Kelley Blue Book, and
24 here's all the money we received. And can you provide that?

25 **MS. HASTINGS:** I absolutely can provide that. That

1 is the most particular request I received for it to date, and I
2 would be happy to do it.

3 **THE COURT:** I'm not -- I'm not in any way saying you
4 did anything wrong in the past. I'm just trying to move
5 forward so that --

6 **MS. HASTINGS:** I agree.

7 **THE COURT:** -- they have the documents. You know,
8 I'm forward looking in this case as much as I possibly can be.

9 **MS. HASTINGS:** I respect that.

10 **THE COURT:** And it's difficult, I will say, for both
11 parties -- it's been easier for plaintiff. You're going to
12 know a lot more about the coding. I'm sympathetic to
13 Mr. Moreno. He's not going to know. I guess I wished the
14 third party was here. They probably would know a little bit
15 more. I'm at a loss as to some of those, you know -- as you
16 say, getting granular can be a little difficult.

17 **MS. HASTINGS:** Right.

18 **THE COURT:** But at least -- it may not be that
19 they've requested it properly, but if they do request it
20 properly, you're happy to -- or if I order it, you're happy to
21 provide both -- for those where you have provided the license
22 agreement, you're also happy to provide the income flow that
23 shows the income following that agreement?

24 **MS. HASTINGS:** Yes, Your Honor.

25 **THE COURT:** All right. Very well. That seems like

1 that --

2 **MS. HASTINGS:** I can provide that tomorrow.

3 **THE COURT:** -- would be helpful. Okay. So that's
4 relative easy for you. Because I was worried that it would be
5 difficult for your client --

6 **MS. HASTINGS:** Well, I'm going to check --

7 **THE COURT:** -- if they have a lot of these licenses.

8 **MS. HASTINGS:** -- but I'm going to make them do it by
9 tomorrow.

10 **THE COURT:** Okay. Well, it doesn't have to be that
11 quick. I just -- I don't want to put an undue burden on your
12 client. On the other hand, that sounds like what would be
13 helpful for him to make a determination of what the appropriate
14 damage model would be with regard to 7.0.0.

15 **MS. HASTINGS:** Thank you, Your Honor.

16 **THE COURT:** Does that seem reasonable then to you?

17 **MS. HASTINGS:** It does. My only -- yes, it does.

18 **THE COURT:** Okay.

19 **MS. HASTINGS:** Today we've only been asked for it.
20 Absolutely that --

21 **THE COURT:** I understand. And we can go through
22 those objections. If we need to, I'm happy to do that.

23 So let me ask you about then the other litigation.
24 That was the other matter. I mentioned that there were 20
25 cases listed in the multidistrict litigation opinion that I

1 have reviewed. How many -- now, those were not consolidated.
2 Those, at least at the time of December 9th, 2015, have not
3 been settled. Have those gone forward? Has there been
4 litigation on 7.0.0 to where there have already been some
5 depositions taken on either -- in either direction, or already
6 been some production? Because I share the concern of the
7 multidistrict panel, that I want to try to avoid unnecessary
8 duplication of effort, either on your side or the side of the
9 defendant, if possible.

10 **MS. HASTINGS:** Thank you. None of the cases I'm
11 involved in, Your Honor. I don't know of any. I have not --
12 this is the only case that I've produced documents in.

13 **THE COURT:** I see. Okay.

14 **MS. HASTINGS:** We put them in a Dropbox and sent them
15 to the other side.

16 **THE COURT:** I see. Okay. All right.

17 **MS. HASTINGS:** There are no -- I've never had any
18 other depositions in any of the cases I'm on. If you want me
19 to, I can go find out about other cases.

20 **THE COURT:** Okay. Are there -- in addition -- okay.
21 Let me just ask you. You're going to know a lot more about
22 this than me. The 20 cases that are listed here, are they
23 7.0.0 cases?

24 **MS. HASTINGS:** Okay. Well, the only -- so yes. The
25 only way that there's ever going to be a Live Face on Web

1 case -- well, I mean, there could be other cases. That's a
2 very broad statement. But 7.0.0 is the only code that got
3 stolen.

4 **THE COURT:** Oh, I see.

5 **MS. HASTINGS:** Therefore, there's no -- Tweople stole
6 that code and resold that code to hundreds of other
7 customers --

8 **THE COURT:** I see.

9 **MS. HASTINGS:** -- that my client then found out
10 about.

11 **THE COURT:** Okay.

12 **MS. HASTINGS:** Sued Tweople.

13 **THE COURT:** Okay.

14 **MS. HASTINGS:** Tweople filed for bankruptcy.
15 Unfortunately, I believe the man who started Tweople has passed
16 away. There is no way to gain any more information from
17 Tweople or to have Tweople satisfy any damages that have been
18 sustained --

19 **THE COURT:** I see. So now you're -- that's why it's
20 expanded in the way it has.

21 **MS. HASTINGS:** So there will be -- I have never seen
22 a lawsuit based on 5.0.1, 6.0.2.

23 **THE COURT:** I got you.

24 **MS. HASTINGS:** Only 7.0.0 was stolen.

25 **THE COURT:** Okay. That then -- that's very helpful,

1 but it raises this concern, because the plaintiff has listed
2 either in reply or in their original motion a hundred cases,
3 more than a hundred cases, more than are in this multidistrict
4 litigation. I guess all those cases actually do involve 7.0.0?

5 **MS. HASTINGS:** Yes.

6 **THE COURT:** How many lawyers does Live Face have
7 working for them on these very many cases throughout the
8 country? Do you have any idea?

9 **MS. HASTINGS:** I think actually most of them
10 concentrate in Florida because that's where Tweople was.

11 **THE COURT:** I see.

12 **MS. HASTINGS:** So the majority of them are in
13 Florida. There's some in Georgia. I have handled cases in
14 Texas, Illinois, Colorado, New York and Missouri --

15 **THE COURT:** All right.

16 **MS. HASTINGS:** -- personally. So I can only speak to
17 those standing here, right now, before you.

18 **THE COURT:** No, I understand.

19 **MS. HASTINGS:** When we responded to the request
20 dealing with transcripts in other cases, the reality is the
21 liability in this case is very straightforward. The
22 transcripts -- what transcripts there may be -- would probably
23 get into damages from the defendant because there is an option
24 to disgorge damages from the defendant in a copyright case.
25 That's one of the measures of damages for a plaintiff. So

1 handing over a transcript regarding the financial information
2 of a defendant in California seems like it's really irrelevant
3 to Mr. Moreno's situation in his case.

4 **THE COURT:** Do you know if on liability or
5 particularly -- Mr. Goldberg, your expert, has been deposed in
6 any of these many, many cases?

7 **MS. HASTINGS:** I think Mr. Goldberg was deposed.
8 There was a -- I think he was deposed in another case, but I am
9 not the lawyer that handled that.

10 **THE COURT:** All right. You would see why it would be
11 relevant to have that deposition transcript if there is a
12 deposition transcript, because if they're going to ask the same
13 questions and Mr. Goldberg's already answered under oath on
14 something that can be helpful with regard to the question of
15 liability, that can be relevant. No? Maybe I'm wrong.

16 **MS. HASTINGS:** No, I understand. I think I
17 understand what you're saying, Your Honor.

18 **THE COURT:** Yeah.

19 **MS. HASTINGS:** It's just --

20 **THE COURT:** I'm wondering if you can find that -- I'm
21 wondering if you can find that transcript. And if not -- or
22 whether you should produce it or not.

23 **MS. HASTINGS:** No. I can find that -- I will find
24 the transcript. I don't --

25 **THE COURT:** Yeah. But it may be that -- you're

1 saying it's not relevant, and I'm happy to hear from you.

2 **MS. HASTINGS:** I just believe that the defense
3 attorneys want to take the deposition of Mr. Goldberg
4 independent of what's happened in any other case.

5 **THE COURT:** Oh, I understand that.

6 **MS. HASTINGS:** So I don't know that it's -- that they
7 are seeking some sort of streamlined attempt that is -- what
8 was in the interest of the multidistrict panel.

9 **THE COURT:** I understand that. But to the extent
10 that Mr. Goldberg's opinions, either in his report or when he
11 is deposed, in any way vary from that one, that would be -- it
12 sounds like that might be relevant.

13 **MS. HASTINGS:** It might be relevant. But may I add
14 one thing?

15 **THE COURT:** Of course.

16 **MS. HASTINGS:** Which is that Dr. Goldberg does not
17 churn out a report that is identical for each of the different
18 defendants because each of the defendants may have posted it in
19 a different way, maybe used a different infringing file.

20 **THE COURT:** Yes.

21 **MS. HASTINGS:** They copied 7.0, named it four
22 different things. He actually has to do a case-by-case process
23 for each defendant that wouldn't necessarily be relevant to IP
24 Player JS, which was what was on Mr. Moreno's computer. It
25 might have been in the other files that copied 7.0.0. He has

1 to do a separate report for each of the defendants because
2 the -- and it's possible that out of the 469 lines that are on
3 7.0.0 -- which I'm sure you've seen them referenced in our
4 motion for summary judgment -- one defendant has identical 189.
5 Mr. Moreno has 189 lines that are identical to our 469, but
6 another defendant may have had 176 or 203. There may be a
7 different proportionality of identity between Live Face's
8 code and whatever the infringing code is for whatever
9 defendant's website it was.

10 So reading Dr. Goldberg's deposition might only tell
11 them how identical that, you know, www.abc.com's infringement
12 was to our 7.0. But that's just --

13 **THE COURT:** All right. I understand.

14 All right. Well, last thing I was going to say is
15 perhaps we could go through the terms of your -- the kind of --
16 you have general objections to a number of the motions -- the
17 requests. Maybe we can see if I can resolve those and see then
18 what the plaintiff's response is.

19 But I've got an answer on the communications with the
20 copyright office, an answer with regard to the licensing
21 agreements and the money that would follow that, a little bit
22 of an answer with regard to -- I got an answer on 7.0.0 and
23 then a little bit of an answer with regard to the litigation.
24 And I'll hear from the plaintiff on all those.

25 But let's -- while we're here, let's go ahead and go

1 through some of your responses to the motions because you, as I
2 understood it, grouped your responses to --

3 **MS. HASTINGS:** Oh, I see. You're talking --

4 **THE COURT:** Yeah. When you responded to the motions
5 to compel, you'd say, look, this is the same objection in each
6 one of these. And it seemed like that was relatively quick --
7 we could go through those relatively quickly.

8 **MS. HASTINGS:** May I just say one quick thing --

9 **THE COURT:** Yes, you may.

10 **MS. HASTINGS:** -- to the copyright office?

11 **THE COURT:** Of course.

12 **MS. HASTINGS:** I also believe, and I will check on
13 this, that -- and if it is anything different, I can update the
14 Court and, of course, opposing counsel.

15 **THE COURT:** Yes.

16 **MS. HASTINGS:** I also believe that communications of
17 the copyright office are public. I believe that they are
18 equally available to the other side, is one of my objections.
19 I will obviously check over and make sure everything has been
20 provided, but I know that's everything I have.

21 **THE COURT:** All right. That's fine. And, I mean,
22 lots of times you'll have things -- there's a lot of -- a lot
23 of litigation files will be public, too. But to the extent
24 that it's somewhat easier for you to get and in the interest of
25 moving it forward, I appreciate your efforts in trying to

1 provide those to the other side.

2 One -- if you look at the motion -- the response to
3 the first motion, one of the issues was this question of
4 whether we use the term video spokesperson --

5 **MS. HASTINGS:** Right.

6 **THE COURT:** -- or the issue -- we use 7.0.0.

7 **MS. HASTINGS:** That is very important. Yes, Your
8 Honor.

9 **THE COURT:** Yes. Go ahead.

10 **MS. HASTINGS:** I realize that was a general
11 objection. I also do include -- if you have a copy of our
12 actual objections, I also object to the term in each of the
13 individual objections --

14 **THE COURT:** Yeah, I saw that.

15 **MS. HASTINGS:** -- as vague and ambiguous. The first,
16 while it seems minor, it is significant. Mr. Grady's actually
17 defined the use of spokesperson is every item appearing on
18 www.livefaceweb.com. My client operates a website at
19 www.livefaceonweb.com. Just -- it's something to point out at
20 the outset.

21 And it also just asks for every single product that
22 is offered -- let's just call it livefaceonweb.com, because I
23 know, of course, that's [inaudible]. That is a number -- that
24 is 12 different products, all driven by different code that
25 have been licensed to over 4,000 and 5,000 customers since

1 2011. My client has 10,000 customers who [inaudible] some, of
2 course, he's had before 2011, which is the timeframe Mr.
3 Grady's asked for responsive documents.

4 That is -- that is -- first, it would be an
5 extraordinary burden on my client to produce them. It's
6 basically everything in our entire company.

7 Second, I do not think it is relevant. We are not
8 asserting that Mr. Moreno has bought and infringed any other
9 code embodied by any other product.

10 And what is also interesting is all of the code at
11 livefaceonweb.com, all of the products at livefaceonweb.com --
12 which it's no secret that livefaceonweb.com exists. We've even
13 produced a screen shot from Live Face on Web in our production.
14 It has the 259.99 on it. We are not trying to hide that there
15 are other products offered online.

16 What is important is that 7.0.0 is actually not
17 offered at www.livefaceonweb.com. It's offered because the
18 people that wanted it back in 2007 asked for it, and our client
19 created the code for it.

20 **THE COURT:** I see. And then it was stolen by
21 Tweople --

22 **MS. HASTINGS:** And then it was stolen. But by the
23 time -- yes.

24 **THE COURT:** Yeah. I got you.

25 Well, with regard to customer agreements relating to

1 the software at issue in this case, do you have any objection
2 to providing those?

3 **MS. HASTINGS:** No. And those are the three --

4 **THE COURT:** And that's the three.

5 **MS. HASTINGS:** -- that we've provided.

6 **THE COURT:** Okay. Very well. All right. Go ahead.

7 Then -- that was one of the issues that -- I mean,
8 that was the vast majority, as I understood, of the issues that
9 we had on the first request for production in the motion to
10 compel. There may have been something else. There was the
11 issue of the claim for attorneys' fees, but I think we can --
12 it's my general practice to allow, when necessary, that
13 discovery later, unless the parties really need it early for
14 some reason, like they're trying to work on a settlement or
15 some other reason. But, I mean, I usually will allow that.
16 Usually there's not a lot of fight about that once the case
17 is --

18 **MS. HASTINGS:** Right.

19 **THE COURT:** -- done. So was there other --

20 **MS. HASTINGS:** Or ones where they're the prevailing
21 party, the defendant.

22 **THE COURT:** Right. That's the first issue. And then
23 once they're there, usually we work those things out.

24 I'm wondering whether you believe there's other
25 objections with regard to the first request for production that

1 you need to specifically talk about. I'm happy to hear about
2 that.

3 **MS. HASTINGS:** The major issue is just the fact that
4 most of them are couched in terms of asking for every product
5 that we have.

6 **THE COURT:** But you're -- but you're happy to provide
7 the 7.0.0 because that's really what -- in your mind what this
8 is about.

9 **MS. HASTINGS:** Your Honor, let me just take one more
10 quick look.

11 **THE COURT:** Sure. Of course. Take your time.
12 That's fine.

13 **MS. HASTINGS:** Yeah. I mean, just every document
14 regarding our operations. I really think resolving the issue
15 of video spokesperson handles a lot of the issues. And we can
16 amend our responses if their -- if his requests were tailored
17 7.0.0, I can amend a lot of my responses.

18 **THE COURT:** All right. Then with regard to the
19 second motion to compel, I saw that we had the question of --
20 there was the issue for all transcripts, which we've just
21 talked about, all the transcripts in other cases. We can put
22 that aside just for the moment until I hear from the other
23 side.

24 There was the issue of the language "tends to show,"
25 that was shown in three -- request for production 3 through 14.

1 If you read that as relevant, in other words, that sort of
2 tends to show that something is relevant when it tends to make
3 something more or less likely to be true as defined under Rule
4 401 of the Federal Rules of Evidence, would that -- does that
5 solve your problem, if we limit "tends to show" to mean
6 relevant within the terms of --

7 **MS. HASTINGS:** Yes.

8 **THE COURT:** Okay. And now, let me just press you on
9 this because there's some language in the recent rules -- the
10 amendments to the rules of discovery that came last year that
11 make it clear that things need to be relevant, but that doesn't
12 mean they need to be admissible. So it could be hearsay --

13 **MS. HASTINGS:** Right.

14 **THE COURT:** -- or it could be -- of course, if it's
15 subject to privilege, you're certainly entitled to put a
16 privilege on. But it could be subject to some other objection
17 besides relevancy. But if it's relevant documents, those are
18 things that could be --

19 **MS. HASTINGS:** Right.

20 **THE COURT:** Would that solve the response?

21 **MS. HASTINGS:** Yes, it would. I think that -- I
22 think a major issue -- this would all -- I mean, globally
23 there's just also an issue of the functionality. I just --

24 **THE COURT:** Sure.

25 **MS. HASTINGS:** I just need to take a look for one

1 second --

2 **THE COURT:** Yeah, take your time.

3 **MS. HASTINGS:** I think I -- [inaudible] my actual
4 responses.

5 **THE COURT:** Yeah. Every one of the responses says
6 "tends to show" is overall -- subject to this objection, we're
7 willing -- we're going to produce, is kind of what it says
8 every time, as I recall.

9 **MS. HASTINGS:** Yeah. And the truth is, Your Honor,
10 we have given them the documents that we have.

11 **THE COURT:** Okay.

12 **MS. HASTINGS:** There is -- there is nothing that we
13 are withholding.

14 **THE COURT:** All right.

15 **MS. HASTINGS:** We are truly withholding the
16 information on every other product and every other code that is
17 not in this case, unless we think that that was requested --

18 **THE COURT:** But you -- yeah, but you're not
19 withholding anything with regard to 7.0.0?

20 **MS. HASTINGS:** Nothing. In fact, we are glad to
21 produce the information about 7.0.0 --

22 **THE COURT:** Except that it doesn't sound -- it
23 doesn't sound like you produced the actual invoices to show
24 payment by Veritech, Kelley Blue Book or Lexus. But you're
25 willing to do that?

1 **MS. HASTINGS:** But I will provide the revenue for
2 each of those three, as we discussed.

3 **THE COURT:** All right. Very well. But go ahead.
4 You were going to look. I didn't mean to --

5 **MS. HASTINGS:** Oh, yes. Thank you.

6 **MR. LOPEZ:** Your Honor, while she reviews her notes,
7 I just had a quick question. When we talk about the documents
8 that show the revenue, you know, it seems like they're asking
9 for, you know, every scrap of paper that could be a deal, a
10 canceled check, anything that shows payment.

11 **THE COURT:** I'm assuming you have either invoices or
12 something that shows that you received -- that your client
13 received money. And if they're a business, they usually have
14 invoices or, you know --

15 **MR. LOPEZ:** We have discussed that with our client,
16 Your Honor.

17 **THE COURT:** -- payment, things like that.

18 **MR. LOPEZ:** We don't have every scrap of paper from
19 every payment going back six, eight, nine years throughout the
20 life of this transaction, the life of this case. But, you
21 know, we do have some of them. We just don't have it all. But
22 we wanted to make sure that --

23 **THE COURT:** Well, this case is a '15 case. So -- you
24 know, and I'm wondering -- you know, and maybe you don't have
25 all the way back to 2007. But you should have back a couple of

1 years or something that would show -- relevant to what -- this
2 gentleman had it, what would other people be paying if he had
3 gone and bought it from you at that time, that sort of document
4 and, you know, a series of payments. If these are three active
5 clients, you ought to have it for the last couple of years.

6 **MS. HASTINGS:** No, no. We'll get the document. And
7 I just looked through all this, Your Honor. If we can
8 [inaudible], we were to [inaudible] we do have [inaudible] as
9 being relevant rather than these [inaudible] tend to show, we
10 will amend our answers.

11 **THE COURT:** Okay. All right.

12 **MS. HASTINGS:** And we will -- and we will have
13 produced everything else.

14 **THE COURT:** All right. So you feel like you've
15 already -- there's nothing you withheld?

16 **MS. HASTINGS:** No.

17 **THE COURT:** To your knowledge?

18 **MS. HASTINGS:** To my knowledge.

19 **THE COURT:** All right. And then, except that you
20 don't know about -- we were talking about the litigation, other
21 litigation because you're not in charge of those other
22 litigation --

23 **MS. HASTINGS:** Oh, right. Well, that's not defense's
24 showing.

25 **THE COURT:** That's not defense's showing, yeah.

1 **MS. HASTINGS:** That I will -- I mean, I can find out.
2 I would say that what happens in every other litigation, I just
3 thought seemed like it was just trying to ask us for volumes
4 and volumes of --

5 **THE COURT:** All right. There's a lot -- a lot of
6 your objections were, look, you're asking us to marshal our --
7 the documents in our case. Lots of times that's an objection
8 to, we're not going to show you what our exhibits are yet. We
9 haven't figured out what our exhibits are.

10 **MS. HASTINGS:** Right. Right.

11 **THE COURT:** But if you're saying that the documents
12 that you have, from which your exhibits will be --

13 **MS. HASTINGS:** Right.

14 **THE COURT:** -- culled, you've already provided?

15 **MS. HASTINGS:** They've provided -- they been
16 provided.

17 **THE COURT:** That's -- that was my question. All
18 right.

19 And then with regard to the question -- the last
20 thing I had for you, and then I'll go back to the other side,
21 with regard to this series of depositions that we need to have,
22 the deposition of Dr. -- and I don't know, Nancy Miracle, and
23 then also -- it says Ms. Miracle here -- Ms. Miracle and then
24 Mr. Goldberg, do you think you can work out those dates for
25 deposition? Is there any issues?

1 **MS. HASTINGS:** Well, I'm asking -- I've asked for the
2 depositions of Dr. Miracle and Mr. Norris. I think maybe it's
3 Dr. Norris.

4 **THE COURT:** Oh, that's right. And that's the
5 other -- I'm sorry. Uh-huh.

6 **MS. HASTINGS:** Their expert. We actually were only
7 provided with dates on February 9th and 10th, which is very
8 hard for the client because Mrs. Miracle is in Dallas, and they
9 only offered the next day in Santa Barbara for Mr. Norris. And
10 that's logistically impossible, given the fact that we've had
11 this hearing and I've been working on the response, that you
12 graciously allowed me until the 9th to respond to, and we had
13 this hearing. And I wanted to make sure things were ready --
14 our documentation, so I could keep track of what we've given
15 the other side. I haven't been able to respond to Mr. Rothman
16 about that.

17 But I've given dates. Mr. -- my client is being --
18 my corporate rep is being deposed here in San Antonio in two
19 weeks. And my expert, Dr. Goldberg, is being deposed on the
20 18th -- on the 17th in New York.

21 **THE COURT:** All right. This is the reason I ask.
22 Right now we have a discovery deadline due of Valentine's.

23 **MS. HASTINGS:** Right.

24 **THE COURT:** And then the 28th for motions.

25 **MS. HASTINGS:** Right.

1 **THE COURT:** Relatively tight. I'm wondering whether
2 you have any opposition to allowing the discovery process to be
3 complete before any further response to the motion for summary
4 judgment is filed. I'd just as soon get all the discovery
5 done, and then you may be filing additional motions on damages.
6 I don't know. But at that point -- let's get all this
7 discovery resolved, and then they can -- if they need to amend
8 their response to the motion for summary judgment, I can
9 consider it at that time.

10 And if so -- and then kind of -- that begs the
11 question I was really asking. Do y'all need more time? I'm
12 happy to work these matters out. We're all here. Let's do it
13 if we can and try to resolve that. That's my question.

14 **MS. HASTINGS:** I don't think -- I think more time
15 would be helpful if we've only been offered the two dates that
16 we've been offered for their clients' depositions, which is
17 quite close to February 14th, which was going to necessitate
18 figuring something out that's creative.

19 So we would like -- we may need more time, Your
20 Honor, yes. I think what you're asking me is am I willing to
21 allow the other side until February 14th or whatever date we
22 determine is the end of discovery, extend their motion for
23 summary judgment on mine --

24 **THE COURT:** Amend their response, yeah. Because
25 they've asked to defer because he was claiming that there was

1 some issues. They've now said that recently they've discovered
2 that. Just as soon hear that as opposed -- and get all the
3 information in before me so I can rule at once.

4 **MS. HASTINGS:** Right. I don't think there is
5 [inaudible] on any more information that they need because, you
6 know, we all might need a little bit more time to get
7 everything done. And I like to be agreeable. I would like to
8 offer that accommodation, but I don't think there's anything
9 more that they need on liability. But if the Court would like
10 us to wait till the end of discovery for them to be allowed to
11 amend their response, that is perfectly fine with me.

12 **THE COURT:** All right. Thank you. And I appreciate
13 your responses.

14 Let me hear from the plaintiff a little more as to
15 some of these matters. I think we've moved closer to some
16 resolution. I'll warn the parties. I got about 20 more
17 minutes, and then I have to go. But I think we can get
18 everything done. I'm very hopeful.

19 **MR. GRADY:** Your Honor, on scheduling, we are also
20 waiting for a date for Bratic, who's recently designated -- of
21 January 4th. And, I mean, not that we're -- you know, we're
22 going to present our experts, but that still has to be done.
23 We haven't received a date. We've asked for a date. So we're
24 waiting for that date.

25 Also, it hasn't been brought up, as well, is that,

1 you know, we also plan to file our own motion for summary
2 judgment.

3 **THE COURT:** Right. I'm assuming that's -- yeah.

4 **MR. GRADY:** You know, I mean --

5 **THE COURT:** That often happens in these cases.

6 **MR. GRADY:** Right. And, you know, we were just
7 waiting till we got -- finished discovery.

8 You know, on the video spokesperson -- and, you know,
9 this is -- you know, it is an important issue. If there is no
10 difference between the codes and the versions of the codes,
11 then, you know -- in function, I mean -- I mean, yes, it's my
12 understanding that the difference of the coding is one enables,
13 for example, the web browsers. Each web browser does not tell
14 the video player what it is. It doesn't say, hello, I am
15 Internet Explorer.

16 So for each version there has to be different code
17 which talks to the web browser and has some kind of -- you
18 know, I don't know how this works at all. But somehow there's
19 a conversation with that web browser.

20 And, of course, there's all kinds of browsers.
21 There's different devices, mobile. So these -- this -- my
22 understanding is the difference -- the core difference, at
23 least from a technical coding standpoint, between the software
24 and -- but it's Live Face's position, and as presented in
25 Bratic's expert report, paragraph 42, that the difference

1 between a single pay licensee versus a monthly licensee who
2 uses 7.0 -- because only 7.0 is done monthly, as I understand
3 it -- is based upon the terms of use.

4 And I have that here. And I would -- I think it's
5 very enlightening, and it's based just on an interview with the
6 CEO, Shcherbakov. So, you know, the reason we want discovery,
7 though, is to kind of ferret out this claim that, "Oh, 7.0 is
8 so different." And, in fact, there's only two current
9 customers who were paying on the monthly, Toyota -- at least as
10 far as we know, although we don't have evidence of payment.
11 The other one, Lexus, I think, canceled after -- before the end
12 of the first year.

13 And the willingness of people and the number of
14 people willing to pay the single pay for this product versus
15 the monthly licensing is directly relevant to the issue of the
16 fair market value, because no willing buyer, or very few or
17 maybe -- you know, I don't know the rationale behind these two
18 supposed -- alleged customers.

19 But, I mean, it kind of goes to the heart of their
20 case in a sense. And that is -- is that no willing buyer is
21 going to pay for such a simple product at such a high monthly
22 licensing price. Now, if there's all these services included,
23 then I could understand. So in sum, that's the reason. And we
24 feel that that's highly relevance -- relevant evidence to our
25 defense.

1 **THE COURT:** Well, I guess this is my question, and I
2 think they've just -- I think you just stated your defense by
3 the evidence that I think they're going to have -- the
4 discovery they're going to have to provide. If there's only
5 three clients and only two of them are still paying, that's all
6 you're going to need to show the jury. No one's buying this
7 product. If no one's buying this product, why should we be
8 paying this exorbitant fee? We didn't do it. Someone else
9 stole it. We didn't even know we stole it. And you're making
10 us pay this exorbitant fee for something that no one else
11 wants.

12 Doesn't that show -- the fact that there's only two
13 people in the whole country -- of the thousands of clients,
14 there were only two people that are buying this, doesn't that
15 prove your point?

16 **MR. GRADY:** Well, and we -- but we have no -- well,
17 and maybe. Yeah, I guess. That sounds good to me. But we
18 don't have any record of additional clients. How many people
19 are paying the monthly fee?

20 **THE COURT:** Well, I think we have a statement by your
21 colleague that there aren't any. That was it. They were the
22 three. You had three license agreements, and they're willing
23 to produce the documents that show that they're paying them --
24 what they paid.

25 **MR. GRADY:** I'm sorry. I meant how many people --

1 the number of people that are paying the single fee license,
2 which isn't a license. It's just a one-time fee. Like, how
3 many people? Are there 5,000 customers who are paying -- who
4 paid 3,000 one-time fee for this, you know, web spokesperson.
5 And then there's like -- we don't know how many people. I
6 mean, it may be -- I guess maybe it's not directly relevant to
7 our case.

8 **THE COURT:** Well, I mean -- I mean, that could be an
9 alternative. If they say, well, we can't prove that anybody's
10 buying the licensing agreement, but we still want the money you
11 have to pay to buy the one-time fee. But they're not saying
12 that. They're saying, we want the license agreement. If they
13 can't prove that, they're out of luck on that -- on that model.

14 **MR. GRADY:** Yeah.

15 **THE COURT:** And it may be that -- you know, that's --
16 they've made the decision to go with that. That's their
17 decision.

18 **MR. GRADY:** Well, I guess we would use that evidence
19 just to show what the fair market value actually is. But I
20 guess --

21 **THE COURT:** I understand.

22 All right. What do you think about -- what about
23 this issue about the copyright office? They say, "Look, this
24 is a stand-alone. It hasn't incorporated other copyrights.
25 We've given you everything we have."

1 **MR. GRADY:** Oh, that's fine. You know, I mean, and
2 this goes to a broader, you know, point on --

3 **THE COURT:** All right. Very well.

4 **MR. GRADY:** -- on their responses, is that a lot of
5 our objections is that we just don't -- that's fine to produce
6 everything. Although they didn't identify -- with some of the
7 stuff it's not so easy to draw a line from, you know, this
8 Bates label range document to this response.

9 **THE COURT:** Let me ask you about that. They give us
10 that -- they gave you that -- or they -- your colleagues cited
11 an index that listed what was responsive to various documents.
12 Did you provide a copy --

13 **MS. HASTINGS:** No. That's just my own personal index
14 I created of everything that we have produced.

15 **THE COURT:** Is that index -- does it show which
16 request for production?

17 **MS. HASTINGS:** It doesn't refer to which. It's just
18 everything identified --

19 **THE COURT:** All right. If you -- there was a request
20 from the defense, "Hey, which documents were responsive," can
21 you answer that question? Is it too difficult to do? It's
22 1,500 pages. It may be difficult. At least with regard to the
23 copyright question, that should be --

24 **MS. HASTINGS:** Well, I can give them the Bates number
25 to the copyright. I have never --

1 **THE COURT:** Okay. All right.

2 **MS. HASTINGS:** I can give them the Bates range for
3 every copyright. And, in fact, actually, they have it in their
4 own pleadings as well. They know what the copyright --

5 **THE COURT:** Oh, which --

6 **MS. HASTINGS:** I mean, they created their own chart
7 as well. It's in their pleading. And they know what's been
8 provided to the copyright office. I can also reiterate what's
9 been provided to the copyright office from our production.

10 **THE COURT:** All right.

11 **MR. GRADY:** Well, and, Your Honor --

12 **THE COURT:** Go ahead.

13 **MR. GRADY:** -- just to give you an example, like on
14 the second RFP --

15 **THE COURT:** Thank you. Go ahead.

16 **MR. GRADY:** -- there's a request. It's, you know, do
17 you have any evidence that Moreno was aware of the copyright
18 infringement? And there's a response. But it's not -- it's
19 not, you know, open and shut. They leave it, you know,
20 hanging.

21 And there's an objection to it. So, you know, just
22 say -- we just want a responsive -- there's no withheld
23 documents. Do you have any evidence -- which I'm pretty -- I
24 know that they don't. But, you know, I think -- and that's --
25 I believe that's required under the rules. If you assert an

1 objection to a request, you know, you should say, well, you
2 know, I'm withholding documents behind the objection, whatever,
3 you know --

4 **THE COURT:** That was one of the amendments that I
5 thought was a very helpful amendment to the rules of civil
6 procedure last year. It's my understanding from your colleague
7 that, in fact, they're not withholding anything.

8 **MS. HASTINGS:** And we just resolved -- that was one
9 of the ones we just resolved. It's the "tends to show," and we
10 just resolved how --

11 **THE COURT:** Oh, if it's -- yeah. Oh, thank you.
12 Thank you for reminding me. If "tends to show" is meant to be
13 relevant, in other words, relevant documents.

14 **MR. GRADY:** Yeah.

15 **THE COURT:** On that list they say they are happy with
16 that. They're happy to amend their response to say, we've
17 provided every relevant document. Does that resolve that
18 narrow question?

19 **MR. GRADY:** Do we get a formal amendment to the
20 response?

21 **THE COURT:** Yeah. Amended response. Sure.

22 **MR. GRADY:** Okay. Okay. I wasn't clear on that.

23 **THE COURT:** Sure. Okay.

24 **MR. GRADY:** Yeah. I know it's kind of ticky tack,
25 but I just wanted to get a formal, you know --

1 **THE COURT:** All right.

2 **MR. GRADY:** -- response on the record.

3 **THE COURT:** And then let me ask you, with regard to
4 the scheduling. It's my general intent to allow you to get the
5 discovery done and then deal with the motions, even though the,
6 you know, plaintiffs say, "Look, our motion's ready to go right
7 now." That happens sometimes in cases. A motion for summary
8 judgment gets filed early because we've given up everything we
9 have, and we think we've got liability knocked down or whatever
10 the issue might be.

11 If I allow you to complete discovery, maybe with some
12 more time, I want to hear from you on that, by the close of
13 discovery, do you think you'd be able at that point then to
14 respond fully, if necessary, by way of an amended response to
15 the motion for summary judgment?

16 **MR. GRADY:** Absolutely. Absolutely.

17 **THE COURT:** All right. Plus, then filing whatever
18 motion you may have as well.

19 **MR. GRADY:** Yes. Of course, our own motions.

20 **THE COURT:** All right.

21 **MR. GRADY:** But yeah, we would like just a little bit
22 more time, especially with Bratic's deposition, too.

23 **THE COURT:** I was going to propose -- and let me hear
24 from the parties. I was going to propose a discovery deadline
25 of March 14th, a month later, and a motions deadline -- I was

1 going to -- two weeks after discovery for motions strikes me as
2 not a good idea. I'll just be frank with you. Because you may
3 need transcripts from your depositions. And if you don't have
4 a transcript, it's very hard to file one of those motions.

5 So I was going to make it a month. So March 14th, or
6 if that's a weekend, the following Monday, and April 14th, or
7 if that's a weekend, the following Monday. And then have that
8 motions deadline also be the deadline by which you file any
9 response to -- I'm sorry. Two weeks would be the deadline for
10 you to file a response. So then the only date -- for the
11 motion that's pending.

12 The danger there, I want to be -- this is what I need
13 to talk to the plaintiffs about. I don't want a situation
14 where you're having to respond to both motions at the same
15 time. I don't want -- or you having to file both motions at
16 the same time. I don't want people to get doubled up.

17 So what is y'all's view as to how to, in an orderly
18 way, get all the responses done? I do not want -- there's no
19 reason to make you go crazy, have to respond to a motion and
20 file a motion on either side. I want to be -- give you the
21 time you need to get that done without, you know, putting aside
22 all your other work just to handle this one case.

23 **MS. HASTINGS:** Did you say something about two weeks
24 for his? Can you say that one more time?

25 **THE COURT:** Well, that's the danger. Typically I

1 would say two weeks for him after the -- you know, he's got --

2 **MS. HASTINGS:** Close of discovery?

3 **THE COURT:** -- discovery, to file his response.

4 **MS. HASTINGS:** Right.

5 **THE COURT:** Or he had responded -- file his response
6 by the motions deadline, but then you'd be replying to his
7 response and responding to his motion. And so --

8 **MS. HASTINGS:** That's fine.

9 **THE COURT:** Is that okay? All right. Well, then
10 that's what I'll do. I'm going to make my -- I'll make the
11 March 14th, or the next Monday, the discovery deadline; April
12 14th, or the next Monday, the motions deadline; require that
13 you file any supplemental motion to -- response for the motion
14 for summary judgment that's been filed already by the motions
15 deadline.

16 **MR. GRADY:** Okay.

17 **THE COURT:** And then you'll have your normal response
18 time, reply and response.

19 **MS. HASTINGS:** Okay.

20 **THE COURT:** If people need more time, I'm easy about
21 that, subject to we need to get the case moved.

22 **MS. HASTINGS:** Which, may I ask, just in that vein --

23 **THE COURT:** Okay.

24 **MS. HASTINGS:** -- when does the Court issue a trial
25 setting? Is that something that you would want to rule on all

1 the motions? What's your typical procedure for time that
2 parties --

3 **THE COURT:** I'd like to look at all the motions.

4 **MS. HASTINGS:** Okay.

5 **THE COURT:** Yes. Before I set the trial deadline.
6 Because I need to know -- I'll be very frank. We're way
7 burdened right now. We're down on some judges here. We
8 have -- one of our San Antonio judges is handling the Waco
9 docket and the Austin docket. Another one of our San Antonio
10 judges is handling the Midland docket.

11 And so, as a result, the San Antonio docket's being
12 handled a lot more by us magistrate judges. And for that
13 reason, there's some delays. And so I need -- I kind of want
14 to look at what I'm looking at to see how much time I believe
15 it's going to take, when I'll be able to get to your motions,
16 because I want to rule on the motions before we get anywhere
17 near trial --

18 **MS. HASTINGS:** Okay.

19 **THE COURT:** -- so that you can prepare. So that's my
20 ten -- that's my general practice. If y'all need a hard date
21 earlier, I'm happy to provide it.

22 **MS. HASTINGS:** No.

23 **THE COURT:** But it's easier for me to do it that way.

24 **MS. HASTINGS:** Just wanted to know your procedure.

25 **THE COURT:** Okay. Anything further from -- I mean, I

1 kind of have a picture of -- my practice is usually to rule on
2 motions to compel from the bench, follow up with a written
3 order. And so I've got a good picture of where we are right
4 now, but there may be additional arguments that you wanted to
5 make on behalf of -- on either of these motions for the
6 defense.

7 **MR. GRADY:** No. I think that's it.

8 **THE COURT:** All right. Very well. Thank you.

9 **MS. HASTINGS:** May I consult just for one moment with
10 my local, and then I might have one more --

11 **THE COURT:** Of course. Absolutely. No. Let's get
12 everything resolved while we can.

13 **MS. HASTINGS:** -- I might have one more thing to say,
14 but I know we only have like ten more minutes.

15 **THE COURT:** No. That's all right.

16 (Discussion off the record)

17 **THE COURT:** All right. Anything else from the
18 plaintiffs?

19 **MS. HASTINGS:** I just wanted to -- just for one
20 moment, just because I think Mr. Grady said something that has
21 just mischaracterized our products, just -- he said there's no
22 difference in the code, and I just want to make sure that I
23 vehemently oppose that because there's --

24 **THE COURT:** That's fine, for -- I mean, that'll be an
25 issue for litigation. You provided me with documents showing

1 what you understand to be the differences of the code but --

2 **MS. HASTINGS:** Right. And --

3 **THE COURT:** That's something that we'll need experts
4 about to help us resolve.

5 **MS. HASTINGS:** Right.

6 **THE COURT:** So you're not waiving --

7 **MS. HASTINGS:** And that's why -- and that's why we
8 think --

9 **THE COURT:** You've not waived -- you haven't waived
10 anything. Don't worry.

11 **MS. HASTINGS:** Okay. Thank you.

12 **THE COURT:** All right. I thank the parties for their
13 presentations. It was very helpful. Was there something else?

14 **MR. LOPEZ:** No, sir.

15 **THE COURT:** Okay. Just so that I can get a picture
16 of where we were with regard both to the liability issues and
17 the damages issues in this case. The two motions, the first
18 motion and second motion to compel will be granted in part and
19 denied in part as follows.

20 I'm going to require that the defense -- I'm sorry --
21 the plaintiffs provide any financial information showing the
22 income stream from the three product -- three licensing
23 agreements they have for version 7.0.0. That's the Veritech,
24 Kelley Blue Book and Lexus.

25 I'm going to also require that they amend their

1 responses to make clear that all relevant documents have been
2 provided as to both motions to compel.

3 I will also require that the plaintiff determine
4 whether -- get copies of transcripts of any depositions of
5 their expert, Mr. Goldberg. And to the extent that those are
6 relevant to the issues in this case, they have to disclose
7 those, as oppose -- if you need me to resolve whether they're
8 relevant or not, I can. It would be the Court's preference
9 that you just disclose the deposition and let them figure out
10 if it's relevant or not. And then you can make your relevancy
11 objections as needed at the time of the deposition. It's a lot
12 easier that way. But if you need me to resolve it in advance,
13 I'm happy to do that.

14 I would ask that the -- all those responsible -- the
15 additional documentation, the amended responses and the
16 depositions be provided two weeks from today.

17 Does that sound reasonable to the plaintiffs?

18 **MS. HASTINGS:** Yes, Your Honor.

19 **THE COURT:** All right. That would be the 24th of
20 January.

21 **MR. GRADY:** The Goldberg deposition is set for the
22 17th.

23 **THE COURT:** Oh, all right. In advance -- the
24 Goldberg then -- the transcripts in advance of that deposition,
25 and the other documents by -- within two weeks. Is that all

1 right for the plaintiffs?

2 **MS. HASTINGS:** Yes, Your Honor.

3 **THE COURT:** All right. Very well.

4 I'm going to extend the discovery deadline to March
5 14th, which is a Tuesday; extend the motions deadline till
6 April 14th, which is a Friday; and then require that the -- any
7 additional response to the currently pending motion for summary
8 judgment be filed by that motions deadline of April 14th.

9 I think -- any other requests that have been made are
10 denied. Given the legitimate disputes the parties have, no
11 expenses or attorneys' fees or any of that are going to be
12 granted with regard to these motions.

13 Anything further from -- since it's the defense
14 motion, let me ask them first. Anything further from the
15 defense at this time?

16 **MR. GRADY:** Are there any deposition transcripts of
17 Dr. -- or not doctor -- of Walter Bratic, the other expert? He
18 may have been a damages -- he's their damages expert in this
19 case. We didn't really discuss --

20 **THE COURT:** Yeah. We didn't get into any more
21 detail, but it doesn't sound like there are.

22 **MS. HASTINGS:** No.

23 **THE COURT:** All right. So I don't think there are.

24 **MR. GRADY:** Okay. All right.

25 **THE COURT:** All right. Very well.

1 Anything further from the plaintiffs? Have I
2 resolved -- any other issues that are out there that you need
3 to --

4 **MS. HASTINGS:** No. Thank you, Your Honor.

5 **THE COURT:** All right. Very well.

6 See, we got done in time. I appreciate the parties'
7 presentations. I will file a short order that memorializes the
8 rulings of the Court today. If for any reason that order is
9 not clear or ambiguous or incorrect as what I said on the
10 record to your understanding, please let me know. Happy to
11 provide an amended order.

12 **MS. HASTINGS:** Thank you.

13 **THE COURT:** That concludes proceedings on this case
14 at this time. We'll be in recess.

15 * * *

16 (End of proceedings at 4:13 p.m.)
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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: 2/16/2017

/s/ Chris Poage
United States Court Reporter
655 East Cesar E. Chavez Blvd., Rm. 314
San Antonio, TX 78206
Telephone: (210) 244-5036